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Mr. Joseph T. Sutton
Executive Director
Alabama Commission on
Higher Education
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Commission on Higher
Education - Education -
Competitive Bid Law

Alabama Commission on Higher
Education may contract for
collection services on
student loans and such
contract is exempt from
competitive bid law under
§ 41-16-21(a), Code of
Alabama, 1975

Dear Mr. Sutton:

We have received and considered your recent request
for an opinion from our office. You gave the following
information:

The Alabama Commission on Higher Education
(ACHE) is responsible for the implement-
ation and administration of the Alabama
Guaranteed Student Loan Program. ... The
loan program has a reinsurance agreement
with the U. S. Department of Education
which will reimburse the AGSLP for 100% of
defaulted loans as long as our default rate
remains below 5% of the total loans in
repayment at the close of the preceding

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fiscal year. In order to insure that our default rate remains below the 5% level, it is important that we contract with two (2) professional collection agencies for the purpose of collecting defaulted loans. ... Although the fees charged by the agencies must have some bearing on the final selection, it is imperative that the contracting agencies have experience in the student loan field.

Your questions, based on this circumstance, were as follows:

1. Such contracts appear to be specifically exempt under Ala. Code Sec. 14-16-51(5) which excepts "[c] contracts for furnishing fiscal or financial advice or services" from the requirements of the bid law in Article 3. This exception is not included in the Article 2 exemptions in Ala. Code Sec. 41-16-21. Do the exemptions provided in Article 3 apply to ACHE and if so, would Sec. 41-16-51(5) apply to service contracts with collection agencies?
2. Would such contracts be exempt from the bid law under Ala. Code Sec. 41-16-21(a) as ... "contracts for the securing of services of ... individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part ..." since experience in student loan collections is vital?

Article 3, § 41-16-50 applies to specific groups as enumerated below:

(a) ... any state trade school, state junior college, state college or university under the supervision and control of the

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state board of education, the city and county boards of education, the district boards of education of independent school districts, the county commissions and the governing bodies of the municipalities of the state, and the governing boards of instrumentalities of counties and municipalities, including waterworks boards, sewer boards, gas boards and other like utility boards and commissions. ...

Commissions are not included in this group, thus the statute applicable to the Commission would be Article 2. Section 41-16-21(a) exempts, as you point out, ... "contracts for the securing of services of ... individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part ...". It is our opinion that the type of contract which you describe would be exempt from competitive bidding under this section. Agencies such as you are seeking the services of generally have in their employ attorneys and others possessing a high degree of professional skill. The "personality" or credentials of the group you select will play a decisive part in that you are specifically seeking experience in the student loan area and this further delineates the degree of professional skill or expertise which you require.

We trust this information will assist you. If we may be of further service, please contact us.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-



PEGGY SCHMITZ
Assistant Attorney General

PS:bd